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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

JOHN P. STIRLING,

Case No. 3:20-cv-00712-SB

Petitioner,

**RESPONDENT'S NOTICE OF
SUPPLEMENTAL AUTHORITY**

v.

DEWAYNE HENDRIX, Warden,
FCI Sheridan,

Respondent.

At the status conference with this Court on Friday, February, 4, 2021, counsel for Respondent referenced a recent decision out of California that dealt with similar issues. Respondent was referencing an order from the Honorable Michael W. Fitzgerald of the United States District Court for the Central District of California dated January 4, 2021, and a recent opinion Judge Fitzgerald issued in the same case on January 4, 2021. *See* Attachments A and B respectively. That case involved claims that were similar to those before this Court regarding conditions of confinement at a BOP prison during the ongoing COVID-19 pandemic.

Judge Fitzgerald dismissed habeas claims pursuant to 28 U.S.C. § 2241 challenging the constitutionality of confinement related to conditions at Federal Correctional Institute Terminal Island (“FCI Terminal Island”) after determining that the habeas claims did not encompass the relief requested. *See* Attachment A, pp. 3,7. However, he allowed the deliberate indifference claim to proceed until last week. In his order granting respondents’ request for summary judgment related to the petitioners’ Eighth Amendment condition-of-confinement claim, Judge Fitzgerald noted on page 15 of Attachment B that Petitioners’ counsel acknowledged the difficulty in tracking “current” conditions faced by inmates related to COVID-19 and their willingness to send an expert to the BOP facility for more information. Attachment B, p. 15. Judge Fitzgerald determined counsel for Petitioners wanted to reopen discovery and expand the record to avoid summary judgment. *Id.* Notably, Judge Fitzgerald described Petitioners’ requests as a desire to “keep this action on life support to prod the Warden to continue to take the pandemic seriously.” *Id.*

Counsel for the Parties continue to discuss the issues involving discovery, a potential settlement conference, and next steps raised during the conference call held with this Court on Friday, February 4, and will advise the Court of the outcome of their conversations on or before Thursday, February 10.

DATED this 7th day of February 2022.

Respectfully submitted,

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